

105TH CONGRESS  
2D SESSION

# S. 2648

To protect children with respect to the Internet, to increase the criminal and civil penalties associated with certain crimes relating to children, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 21 (legislative day, OCTOBER 2), 1998

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect children with respect to the Internet, to increase the criminal and civil penalties associated with certain crimes relating to children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Keeping the Internet  
5 Decent and Safe Act”.

### 6 **SEC. 2. PURCHASE OF SCREENING SOFTWARE BY ELEMEN-** 7 **TARY AND SECONDARY SCHOOLS.**

8 (a) IN GENERAL.—Notwithstanding any other provi-  
9 sion of law, an elementary school or secondary school may

1 use any funds received under sections 3132 and 3136, and  
 2 titles IV and VI, of the Elementary and Secondary Edu-  
 3 cation Act of 1965 (20 U.S.C. 6842, 6846, 7101 et seq.,  
 4 and 7301 et seq.) and subtitle B of the Museum and Li-  
 5 brary Services Act (20 U.S.C. 9101 et seq.) to purchase  
 6 screening software.

7 (b) DEFINITIONS.—In this section:

8 (1) ELEMENTARY SCHOOL; SECONDARY  
 9 SCHOOL.—The terms “elementary school” and “sec-  
 10 ondary school” have the meanings given the terms  
 11 in section 14101 of the Elementary and Secondary  
 12 Education Act of 1965 (20 U.S.C. 8801).

13 (2) SCREENING SOFTWARE.—The term “screen-  
 14 ing software” means software that is designed to  
 15 permit a person to limit access to material on the  
 16 Internet that is harmful to minors.

17 **SEC. 3. ENHANCED CRIMINAL PENALTIES FOR CERTAIN**  
 18 **SEXUAL EXPLOITATION OF CHILDREN.**

19 (a) FORFEITURE.—

20 (1) OFFENSES RELATING TO CHILD PORNOG-  
 21 RAPHY.—

22 (A) CRIMINAL FORFEITURE.—Section  
 23 2253(a) of title 18, United States Code, is  
 24 amended—

(i) in the matter preceding paragraph (1), by inserting “, or an offense under section 2252A of this chapter involving child pornography,” after “of this chapter”; and

(ii) in paragraph (1)—

(I) by inserting “any child pornography covered by section 2252A of this chapter,” after “of this chapter”; and

(II) by inserting “or child pornography, as the case may be” after “such visual depiction”.

(B) CIVIL FORFEITURE.—Section 2254(a) of such title is amended—

(i) in paragraph (1)—

(I) by inserting “any child pornography covered by section 2252A of this chapter,” after “of this chapter”; and

(II) by inserting “or child pornography, as the case may be” after “such visual depiction”; and

(ii) in paragraphs (2) and (3), by inserting “, or an offense under section

1                   2252A of this chapter involving child por-  
 2                   nography,” after “of this chapter” each  
 3                   place it appears.

4                   (2) OFFENSES RELATING TO COERCION AND  
 5                   ENTICEMENT AND TRANSPORTATION OF MINORS  
 6                   FOR SEXUAL PURPOSES.—

7                   (A) IN GENERAL.—Chapter 117 of such  
 8                   title is amended by adding at the end the fol-  
 9                   lowing new sections:

10   **“§ 2425. Criminal forfeiture**

11               “(a) PROPERTY SUBJECT TO CRIMINAL FORFEIT-  
 12               URE.—A person who is convicted of an offense under sec-  
 13               tion 2422(b) or section 2423 shall forfeit to the United  
 14               States such person’s interest in—

15               “(1) any property, real or personal, constituting  
 16               or traceable to gross profits or other proceeds ob-  
 17               tained from such offense; and

18               “(2) any property, real or personal, used or in-  
 19               tended to be used to commit or to promote the com-  
 20               mission of such offense.

21               “(b) THIRD PARTY TRANSFERS.—(1) All right, title,  
 22               and interest in property described in subsection (a) vests  
 23               in the United States upon the commission of the act giving  
 24               rise to forfeiture under this section.

1       “(2) Any such property that is subsequently trans-  
2       ferred to a person other than the defendant may be the  
3       subject of a special verdict of forfeiture and thereafter  
4       shall be ordered forfeited to the United States unless the  
5       transferee establishes in a hearing pursuant to subsection  
6       (m) that he is a bona fide purchaser for value of such  
7       property who at the time of purchase was reasonably with-  
8       out cause to believe that the property was subject to for-  
9       feiture under this section.

10       “(c) PROTECTIVE ORDERS.—(1) Upon application of  
11       the United States, the court may enter a restraining order  
12       or injunction, require the execution of a satisfactory per-  
13       formance bond, or take any other action to preserve the  
14       availability of property described in subsection (a) for for-  
15       feiture under this section—

16               “(A) upon the filing of an indictment or infor-  
17       mation charging a violation of section 2422(b) or  
18       2423 for which criminal forfeiture may be ordered  
19       under this section and alleging that the property  
20       with respect to which the order is sought would, in  
21       the event of conviction, be subject to forfeiture  
22       under this section; or

23               “(B) prior to the filing of such an indictment  
24       or information, if, after notice to persons appearing

1 to have an interest in the property and opportunity  
2 for a hearing, the court determines that—

3 “(i) there is a substantial probability  
4 that—

5 “(I) the United States will prevail on  
6 the issue of forfeiture; and

7 “(II) failure to enter the order will re-  
8 sult in the property being destroyed, re-  
9 moved from the jurisdiction of the court,  
10 or otherwise made unavailable for forfeit-  
11 ure; and

12 “(ii) the need to preserve the availability of  
13 the property through the entry of the requested  
14 order outweighs the hardship on any party  
15 against whom the order is to be entered.

16 “(2) An order entered pursuant to paragraph (1)(B)  
17 shall be effective for not more than 90 days unless ex-  
18 tended by the court for good cause shown or unless an  
19 indictment or information described in paragraph (1)(A)  
20 has been filed.

21 “(3)(A) A restraining order under this subsection  
22 may be entered upon application of the United States  
23 without notice or opportunity for a hearing when an infor-  
24 mation or indictment has not yet been filed with respect

1 to the property if the United States demonstrates that  
2 there is probable cause to believe that—

3 “(i) the property with respect to which the  
4 order is sought would, in the event of conviction, be  
5 subject to forfeiture under this section; and

6 “(ii) the provision of notice will jeopardize the  
7 availability of the property for forfeiture.

8 “(B) A restraining order under this paragraph shall  
9 expire not more than 10 days after the date on which it  
10 is entered unless extended for good cause shown or unless  
11 the party against whom it is entered consents to an exten-  
12 sion for a longer period. A hearing requested concerning  
13 an order entered under this paragraph shall be held at  
14 the earliest possible time and prior to the expiration of  
15 the order.

16 “(4) The court may receive and consider, at a hearing  
17 held pursuant to this subsection, evidence and information  
18 that would be inadmissible under the Federal Rules of  
19 Evidence.

20 “(d) WARRANT OF SEIZURE.—(1) The Government  
21 may request the issuance of a warrant authorizing the sei-  
22 zure of property subject to forfeiture under this section  
23 in the same manner as provided for a search warrant.

24 “(2) If the court determines that there is probable  
25 cause to believe that the property to be seized would, in

1 the event of conviction, be subject to forfeiture and that  
2 an order under subsection (c) may not be sufficient to as-  
3 sure the availability of the property for forfeiture, the  
4 court shall issue a warrant authorizing the seizure of such  
5 property.

6 “(e) ORDER OF FORFEITURE.—The court shall order  
7 forfeiture of property referred to in subsection (a) if the  
8 trier of fact determines, beyond a reasonable doubt, that  
9 such property is subject to forfeiture.

10 “(f) EXECUTION.—(1) Upon entry of an order of for-  
11 feiture under this section, the court shall authorize the  
12 Attorney General to seize all property ordered forfeited  
13 upon such terms and conditions as the court considers  
14 proper.

15 “(2) Following entry of an order declaring the prop-  
16 erty forfeited, the court may, upon application of the  
17 United States, enter such appropriate restraining orders  
18 or injunctions, require the execution of satisfactory per-  
19 formance bonds, appoint receivers, conservators, apprais-  
20 ers, accountants, or trustees, or take any other action to  
21 protect the interest of the United States in the property  
22 ordered forfeited.

23 “(3) Any income accruing to or derived from property  
24 ordered forfeited under this section may be used to offset  
25 ordinary and necessary expenses to the property which are



1 required by law, or which are necessary to protect the in-  
2 terests of the United States or third parties.

3 “(g) DISPOSITION OF PROPERTY.—(1) Following the  
4 seizure of property ordered forfeited under this section,  
5 the Attorney General shall retain such property for official  
6 use or direct the disposition of such property described  
7 by sale or any other commercially feasible means, making  
8 due provision for the rights of any innocent persons. Any  
9 property right or interest not exercisable by, or transfer-  
10 able for value to, the United States shall expire and shall  
11 not revert to the defendant, nor shall the defendant or  
12 any person acting in concert with him or on his behalf  
13 be eligible to purchase forfeited property at any sale held  
14 by the United States.

15 “(2) Upon application of a person, other than the de-  
16 fendant or person acting in concert with him or on his  
17 behalf, the court may restrain or stay the sale or disposi-  
18 tion of the property pending the conclusion of any appeal  
19 of the criminal case giving rise to the forfeiture if the ap-  
20 plicant demonstrates that proceeding with the sale or dis-  
21 position of the property will result in irreparable injury,  
22 harm, or loss to him.

23 “(h) AUTHORITY OF ATTORNEY GENERAL.—With re-  
24 spect to property ordered forfeited under this section, the  
25 Attorney General may—

1           “(1) grant petitions for mitigation or remission  
2           of forfeiture, restore forfeited property to victims of  
3           a violation of section 2422(b) or 2423, or take any  
4           other action to protect the rights of innocent persons  
5           which is in the interest of justice and which is not  
6           inconsistent with the provisions of this section;

7           “(2) compromise claims arising under this sec-  
8           tion;

9           “(3) award compensation to persons providing  
10          information resulting in a forfeiture under this sec-  
11          tion;

12          “(4) direct the disposition by the United States,  
13          under section 616 of the Tariff Act of 1930, of all  
14          property ordered forfeited under this section by pub-  
15          lic sale or any other commercially feasible means,  
16          making due provision for the rights of innocent per-  
17          sons; and

18          “(5) take appropriate measures necessary to  
19          safeguard and maintain property ordered forfeited  
20          under this section pending its disposition.

21          “(i) APPLICABILITY OF CIVIL FORFEITURE PROVI-  
22          SIONS.—Except to the extent that they are inconsistent  
23          with the provisions of this section, the provisions of section  
24          2426 shall apply to a criminal forfeiture under this sec-  
25          tion.

1       “(j) BAR ON INTERVENTION.—Except as provided in  
2 subsection (m), no party claiming an interest in property  
3 subject to forfeiture under this section may—

4               “(1) intervene in a trial or appeal of a criminal  
5 case involving the forfeiture of such property under  
6 this section; or

7               “(2) commence an action at law or equity  
8 against the United States concerning the validity of  
9 his alleged interest in the property subsequent to the  
10 filing of an indictment or information alleging that  
11 the property is subject to forfeiture under this sec-  
12 tion.

13       “(k) JURISDICTION TO ENTER ORDERS.—The dis-  
14 trict courts of the United States shall have jurisdiction  
15 to enter orders as provided in this section without regard  
16 to the location of any property which may be subject to  
17 forfeiture under this section or which has been ordered  
18 forfeited under this section.

19       “(l) DEPOSITIONS.—In order to facilitate the identi-  
20 fication and location of property declared forfeited and to  
21 facilitate the disposition of petitions for remission or miti-  
22 gation of forfeiture, after the entry of an order declaring  
23 property forfeited to the United States, the court may,  
24 upon application of the United States, order that the testi-  
25 mony of any witness relating to the property forfeited be

1 taken by deposition and that any designated book, paper,  
2 document, record, recording, or other material not privi-  
3 leged be produced at the same time and place, in the same  
4 manner as provided for the taking of depositions under  
5 rule 15 of the Federal Rules of Criminal Procedure.

6 “(m) THIRD PARTY INTERESTS.—(1) Following the  
7 entry of an order of forfeiture under this section, the  
8 United States shall publish notice of the order and of its  
9 intent to dispose of the property in such manner as the  
10 Attorney General may direct. The Government may also,  
11 to the extent practicable, provide direct written notice to  
12 any person known to have alleged an interest in the prop-  
13 erty that is the subject of the order of forfeiture as a sub-  
14 stitute for published notice as to those persons so notified.

15 “(2) Any person, other than the defendant, asserting  
16 a legal interest in property which has been ordered for-  
17 feited to the United States pursuant to this section may,  
18 within 30 days of the final publication of notice or his  
19 receipt of notice under paragraph (1), whichever is earlier,  
20 petition the court for a hearing to adjudicate the validity  
21 of his alleged interest in the property. The hearing shall  
22 be held before the court alone, without a jury.

23 “(3) The petition shall be signed by the petitioner  
24 under penalty of perjury and shall set forth the nature  
25 and extent of the petitioner’s right, title, or interest in

1 the property, the time and circumstances of the petition-  
2 er's acquisition of the right, title, or interest in the prop-  
3 erty, any additional facts supporting the petitioner's claim,  
4 and the relief sought.

5       “(4) The hearing on the petition shall, to the extent  
6 practicable and consistent with the interests of justice, be  
7 held within 30 days of the filing of the petition. The court  
8 may consolidate the hearing on the petition with a hearing  
9 on any other petition filed by a person other than the de-  
10 fendant under this subsection.

11       “(5) At the hearing, the petitioner may testify and  
12 present evidence and witnesses on his own behalf, and  
13 cross-examine witnesses who appear at the hearing. The  
14 United States may present evidence and witnesses in re-  
15 buttal and in defense of its claim to the property and  
16 cross-examine witnesses who appear at the hearing. In ad-  
17 dition to testimony and evidence presented at the hearing,  
18 the court shall consider the relevant portions of the record  
19 of the criminal case which resulted in the order of forfeit-  
20 ure.

21       “(6) If, after the hearing, the court determines that  
22 the petitioner has established by a preponderance of the  
23 evidence that—

24               “(A) the petitioner has a legal right, title, or in-  
25 terest in the property, and such right, title, or inter-

1 est renders the order of forfeiture invalid in whole  
2 or in part because the right, title, or interest was  
3 vested in the petitioner rather than the defendant or  
4 was superior to any right, title, or interest of the de-  
5 fendant at the time of the commission of the acts  
6 which gave rise to the forfeiture of the property  
7 under this section; or

8 “(B) the petitioner is a bona fide purchaser for  
9 value of the right, title, or interest in the property  
10 and was at the time of purchase reasonably without  
11 cause to believe that the property was subject to for-  
12 feiture under this section;

13 the court shall amend the order of forfeiture in accordance  
14 with its determination.

15 “(7) Following the court’s disposition of all petitions  
16 filed under this subsection, or if no such petitions are filed  
17 following the expiration of the period provided in para-  
18 graph (2) for the filing of such petitions, the United States  
19 shall have clear title to property that is the subject of the  
20 order of forfeiture and may warrant good title to any sub-  
21 sequent purchaser or transferee.

22 “(n) SUBSTITUTE ASSETS.—If any of the property  
23 described in subsection (a), as a result of any act or omis-  
24 sion of the defendant—

1           “(1) cannot be located upon the exercise of due  
2 diligence;

3           “(2) has been transferred or sold to, or depos-  
4 ited with, a third party;

5           “(3) has been placed beyond the jurisdiction of  
6 the court;

7           “(4) has been substantially diminished in value;  
8 or

9           “(5) has been commingled with other property  
10 which cannot be divided without difficulty;

11 the court shall order the forfeiture of any other property  
12 of the defendant up to the value of any property described  
13 in paragraphs (1) through (5).

14       “(o) CONSTRUCTION.—This section shall be liberally  
15 construed to effectuate its remedial purposes.

16 **“§ 2426. Civil forfeiture**

17       “(a) PROPERTY SUBJECT TO CIVIL FORFEITURE.—

18 The following property shall be subject to forfeiture by the  
19 United States:

20           “(1) Any property, real or personal, used or in-  
21 tended to be used to commit or to promote the com-  
22 mission of an offense under section 2422(b) or  
23 2423, except that no property shall be forfeited  
24 under this paragraph, to the extent of the interest  
25 of an owner, by reason of any act or omission estab-

1       lished by that owner to have been committed or  
2       omitted without the knowledge or consent of that  
3       owner.

4               “(2) Any property, real or personal, constitut-  
5       ing or traceable to gross profits or other proceeds  
6       obtained from a violation of section 2422(b) or  
7       2423, except that no property shall be forfeited  
8       under this paragraph, to the extent of the interest  
9       of an owner, by reason of any act or omission estab-  
10      lished by that owner to have been committed or  
11      omitted without the knowledge or consent of that  
12      owner.

13       “(b) SEIZURE PURSUANT TO SUPPLEMENTAL RULES  
14      FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS.—Any  
15      property subject to forfeiture to the United States under  
16      this section may be seized by the Attorney General, the  
17      Secretary of the Treasury, or the United States Postal  
18      Service upon process issued pursuant to the Supplemental  
19      Rules for Certain Admiralty and Maritime Claims by any  
20      district court of the United States having jurisdiction over  
21      the property, except that seizure without such process may  
22      be made when the seizure is pursuant to a search under  
23      a search warrant or incident to an arrest. The Government  
24      may request the issuance of a warrant authorizing the sei-  
25      zure of property subject to forfeiture under this section



1 in the same manner as provided for a search warrant  
2 under the Federal Rules of Criminal Procedure.

3 “(c) CUSTODY OF FEDERAL OFFICIAL.—Property  
4 taken or detained under this section shall not be  
5 replevable, but shall be deemed to be in the custody of  
6 the Attorney General, Secretary of the Treasury, or the  
7 United States Postal Service subject only to the orders  
8 and decrees of the court or the official having jurisdiction  
9 thereof. Whenever property is seized under any of the pro-  
10 visions of this subchapter, the Attorney General, Secretary  
11 of the Treasury, or the United States Postal Service  
12 may—

13 “(1) place the property under seal;

14 “(2) remove the property to a place designated  
15 by the official or agency; or

16 “(3) require that the General Services Adminis-  
17 tration take custody of the property and remove it,  
18 if practicable, to an appropriate location for disposi-  
19 tion in accordance with law.

20 “(d) OTHER LAWS AND PROCEEDINGS APPLICA-  
21 BLE.—All provisions of the customs laws relating to the  
22 seizure, summary and judicial forfeiture, and condemna-  
23 tion of property for violation of the customs laws, the dis-  
24 position of such property or the proceeds from the sale  
25 thereof, the remission or mitigation of such forfeitures,

1 and the compromise of claims, shall apply to seizures and  
2 forfeitures incurred, or alleged to have been incurred,  
3 under this section, insofar as applicable and not inconsis-  
4 ent with the provisions of this section, except that such  
5 duties as are imposed upon the customs officer or any  
6 other person with respect to the seizure and forfeiture of  
7 property under the customs laws shall be performed with  
8 respect to seizures and forfeitures of property under this  
9 section by such officers, agents, or other persons as may  
10 be authorized or designated for that purpose by the Attor-  
11 ney General, the Secretary of the Treasury, or the Postal  
12 Service, except to the extent that such duties arise from  
13 seizures and forfeitures affected by any customs officer.

14 “(e) DISPOSITION OF FORFEITED PROPERTY.—(1)  
15 Whenever property is forfeited under this section the At-  
16 torney General may—

17 “(A) retain the property for official use or  
18 transfer the custody or ownership of any forfeited  
19 property to a Federal, State, or local agency under  
20 section 616 of the Tariff Act of 1930;

21 “(B) sell, by public sale or any other commer-  
22 cially feasible means, any forfeited property which is  
23 not required to be destroyed by law and which is not  
24 harmful to the public; or

1           “(C) require that the General Services Adminis-  
2           tration take custody of the property and dispose of  
3           it in accordance with law.

4           “(2)(A) The Attorney General, Secretary of the  
5           Treasury, or the United States Postal Service shall ensure  
6           the equitable transfer pursuant to paragraph (1)(A) of  
7           any forfeited property to the appropriate State or local  
8           law enforcement agency so as to reflect generally the con-  
9           tribution of any such agency participating directly in any  
10          of the acts which led to the seizure or forfeiture of such  
11          property. A decision by an official or agency pursuant to  
12          paragraph (1)(A) shall not be subject to judicial review.

13          “(B) With respect to a forfeiture conducted by the  
14          Attorney General, the Attorney General shall forward to  
15          the Treasurer of the United States for deposit in accord-  
16          ance with section 524(c) of title 28 the proceeds from any  
17          sale under paragraph (1)(B) and any moneys forfeited  
18          under this section.

19          “(C) With respect to a forfeiture conducted by the  
20          Postal Service, the proceeds from any sale under para-  
21          graph (1)(B) and any moneys forfeited under this section  
22          shall be deposited in the Postal Service Fund as required  
23          by section 2003(b)(7) of title 39.

24          “(f) TITLE TO PROPERTY.—All right, title, and inter-  
25          est in property described in subsection (a) shall vest in

1 the United States upon commission of the act giving rise  
2 to forfeiture under this section.

3 “(g) STAY OF PROCEEDINGS.—The filing of an in-  
4 dictment or information alleging a violation of section  
5 2422(b) or 2423 which is also related to a civil forfeiture  
6 proceeding under this section shall, upon motion of the  
7 United States and for good cause shown, stay the civil  
8 forfeiture proceeding.

9 “(h) VENUE.—In addition to the venue provided for  
10 in section 1395 of title 28 or any other provision of law,  
11 in the case of property of a defendant charged with a viola-  
12 tion that is the basis for forfeiture of the property under  
13 this section, a proceeding for forfeiture under this section  
14 may be brought in the judicial district in which the defend-  
15 ant owning such property is found or in the judicial dis-  
16 trict in which the criminal prosecution is brought.”.

17 (B) CLERICAL AMENDMENT.—The table of  
18 sections at the beginning of chapter 117 of title  
19 18, United States Code, is amended by adding  
20 at the end the following:

“2425. Criminal forfeiture.

“2426. Civil forfeiture.”.

21 (b) RELEASE AND DETENTION FOR COERCION AND  
22 ENTICEMENT AND TRANSPORTATION OF MINORS FOR  
23 SEXUAL PURPOSES.—Section 3156(a)(4)(C) of such title  
24 is amended by striking “chapter 109A or chapter 110”

1 and inserting “chapter 109A or 110 or section 2422(b)  
2 or 2423”.

